

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Nicholas Queen,

Petitioner,

v.

Darlene Drew, Warden, FCI
Bennettsville,

Respondent.

C/A No. 2:11-2573-TMC

OPINION & ORDER

Petitioner, a federal prisoner proceeding *pro se*, filed this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., all pre-trial proceedings were referred to a Magistrate Judge. On October 18, 2011, Magistrate Judge Bruce Howe Hendricks issued a Report and Recommendation ("Report") recommending the Petition be dismissed without prejudice and without requiring Respondent to file an Answer or return. (Dkt. #11). The Magistrate Judge provided Petitioner a notice advising him of his right to file objections to the Report. (Dkt. # 11 at 12). Petitioner filed objections to the Magistrate Judge's Report on October 24, 2011. (Dkt. # 17). This matter was assigned to the undersigned on October 18, 2011.

The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit

the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

In her Report, the Magistrate Judge recommended the petition be dismissed because the Petitioner has not exhausted his Bureau of Prisons (“BOP”) remedies and that Petitioner must complete the administrative process before bringing an action pursuant to 28 U.S.C. § 2241. *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 490-91 (1973). The Report sets out the procedures the Petitioner must first utilize to pursue and exhaust such administrative remedies.¹

Further, as noted by the Magistrate Judge, it appears the Petitioner’s claims have already been addressed adversely to Petitioner by the United States District Court for the District of Maryland and the United States Court of Appeals for the Fourth Circuit. (Report, at 7, 8). In addition, the Petitioner’s claims have been presented to the United District Court for the Eastern District of California and the United States District Court for the Middle District of Pennsylvania, to no avail.

The Court has carefully reviewed the Petitioner’s objections, but finds them to be without merit.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court finds Petitioner’s objections are without merit. Accordingly, the court adopts the Report and incorporates it herein. It is therefore

¹ Subsequent to the filing of the Report, Petitioner filed a “Declaration” asserting that he had again “attempted to exhaust the FCI-Bennettsville remedy” to no avail. (Dkt. # 19). However, other than this assertion, Petitioner provided no other evidence that he had complied with the required procedures to exhaust his BOP remedies. The remaining assertions in the “Declaration” contain recitations of arguments contained in Petitioner’s previous filings.

ORDERED that the Petition is **DISMISSED** without prejudice and without requiring Respondent to file an Answer or return.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

January 12, 2012
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.